

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA**

**JM a minor
by and through TANYA LARDIERI
his Parent and Next Friend**

Plaintiff,

v.

CIVIL ACTION NO.: 2:15-cv-04822

**LOGAN COUNTY BOARD OF EDUCATION,
*et al,***

Defendants.

DEFENDANTS' MOTION TO STRIKE

COME NOW the Defendants, , Logan County Board of Education, Logan Middle School, Phyllis Adkins, William Davis, Mark McGrew, Dr. Pat White, and James Frye in their official capacities, Wilma Zigmond, Ernestine Sutherland, David Burroway, Howard Rockhold, Anita Gore, and Christopher Marcus each in their individual and official capacities by counsel, Duane J. Ruggier, II, Jacob D. Layne, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to Rule 7.1 of the Local Rules of Civil Procedure for the United States District Court of the Southern District of West Virginia and file their motion to strike any pleading of Plaintiff responsive to Defendants' previously filed Motion to Dismiss (ECF No. 7) and/or Memorandum of Law in support thereof (ECF No. 8). In support of this Motion, the Defendants state as follows:

1. Defendants filed their Motion to Dismiss (ECF No. 7) and supporting Memorandum of Law (ECF No. 8) on August 31, 2015.

2. Rule 7.1(a)(7) of the Local Rules of Civil Procedure for the United States District Court of the Southern District of West Virginia states as follows:

Memoranda and other materials in response to motions **shall** be filed and served on opposing counsel and unrepresented parties **within 14 days** from the date of service of the motion.

LR Civ. P. 7.1(a)(7)**[emphasis added]**

3. Pursuant to the above local rule responses “shall” be filed within 14 days. In accordance with Local Rule 7.1(a)(7), Plaintiff’s Response to Defendants’ Motion was due September 14, 2015.

4. To date, in excess of two weeks following the deadline pursuant to Local Rule 7.1(a)(7), Plaintiff has not filed a pleading responsive to Defendants’ Motion.

5. This Court has held it appropriate to review and rule upon a motion to dismiss without the benefit of a response when a party fails to file a responsive pleading within the guidelines outlined by Rule 7.1(a)(7). See *Burkhamer v. Ore*, No. CIV A 206-00569, 2006 WL 2623355 (S.D.W. Va. Sept. 13, 2006); See also *Web Mgmt., Inc. v. Sparkle Pool Co.*, No. CIV.A. 6:09-CV-01285, 2010 WL 113997 (S.D.W. Va. Jan. 11, 2010) (Both courts ruling upon a motion to dismiss when no responsive pleading had been filed within the time frame required by the local rule).

6. This Court has also held it appropriate to strike a responsive pleading filed and served outside of the time constraints under Rule 7.1(a)(7). See *Watson v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, No. 5:13-CV-01939, 2013 WL 2000267 (S.D.W. Va. May 13, 2013).

7. Defendants hereby move that this Honorable Court strike any pleading filed by Plaintiff in response to Defendants’ Motion to Dismiss should such pleading be filed prior to this Court’s ruling upon said motion as said pleading would be untimely pursuant to Rule 7.1(a)(7).

ACCORDINGLY, Defendants hereby move this Honorable Court to strike any pleading filed by Plaintiff in response to Defendants’ Motion to Dismiss, grant Defendants their costs and

fees, impose other sanctions associated with Plaintiff's violation of the Local Rules; and grant Defendants any other relief deemed appropriate by this Honorable Court.

**LOGAN COUNTY BOARD OF EDUCATION,
LOGAN MIDDLE SCHOOL, PHYLLIS
ADKINS, WILLIAM DAVIS, MARK
MCGREW, DR. PAT WHITE, JAMES FRYE,
WILMA ZIGMOND, ERNESTINE
SUTHERLAND, DAVID BURROWAY,
HOWARD ROCKHOLD, ANITA GORE, and
CHRISTOPHER MARCUS,**

BY COUNSEL,

/s/Duane J. Ruggier, II

DUANE J. RUGGIER II (WVSB #7787)

JACOB D. LAYNE (WVSB #11973)

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Defendants.

CERTIFICATE OF SERVICE

The undersigned counsel for Defendants do hereby certify on October 2, 2015, that a true copy of “*Defendants’ Motion to Strike*” has been filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the below listed CM/ECF participant:

Benjamin F. White, Esquire
Benjamin F. White, Attorney at Law
338 Main Street
Chapmanville, West Virginia 25508
Counsel for Plaintiff

s/Duane J. Ruggier II
DUANE J. RUGGIER II (WVSB #7787)
JACOB D. LAYNE (WVSB #11973)

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